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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,314	07/15/2005	William J Smirles	3994942	2682
7590 Porter Wright Morris & Arthur 41 South High Street 28th Floor Columbus, OH 43215			EXAMINER STOKLOS, JOSEPH A	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 11/05/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/542,314

**Applicant(s)**

SMIRLES ET AL.

**Examiner**

JOSEPH STOKLOSA

**Art Unit**

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-6, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/9/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson et al (US 6,029,085) in view of Morgan (US 5,591,213) and in view of Hansen (US 6,662,046).
5. Olson discloses a portable automated external defibrillator with a housing, element 7, electrodes, 5, a battery, and connector for connecting the battery and electrodes to the defibrillator (e.g. Col. 4, line 33-57). Olson discloses an electrode stowage compartment, 13.
6. Olson fails to teach preventing application of battery power to the defibrillation circuitry, and a means for automatically connecting battery power to the defibrillator upon removal and deployment of the electrodes.
7. Hansen teaches that it is known to prevent power to the defibrillation circuitry and automatically provide power to the circuitry when the unit is removed from a housing member as set forth in Col. 4, line 32-62, for providing the predictable results of automatic activation of the defibrillator unit after basic steps for use of the device are taken while also ensuring activation in spite of a user panicking and not being aware enough to activate a separate switch for activating the device. Hansen teaches the automatic activation being designed around removal of the entire unit from a fixed housing, and not the removal of the electrodes from the unit housing.
8. Morgan teaches that it is known to use an electrode deployment sensing means for detecting when the electrodes are separated from a testing pad as set forth in Col. 6, line 3-4 for providing the predictable result of ensuring the proper pulse is transmitted through the electrodes (i.e. a test pulse or actual therapy).

9. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system as taught by Olson with providing an automatic activation, where power is disabled when the electrodes are within the housing and power is provided upon removal of the electrodes, since such a modification would provide the predictable results of automatic activation of the defibrillator unit after basic steps for use of the device are taken while also ensuring activation in spite of a user panicking and not being aware enough to activate a separate switch for activating the device, while also maintaining a level of portability since Hansen teaches the housing is fixed in a predetermined location and ensuring the proper pulse is delivered or conversely not delivered through the electrodes.

10. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olson in view of Hansen and Morgan as applied above, and further in view of Owen (US 6,148,233).

11. Olson in view of Hansen and Morgan disclose the invention as claimed except for a common housing of the electrodes and battery fitted to slidably mechanically and electrically engage the defibrillator with complementary upper and lower tray like recesses. Owen teaches that it is known to use a common housing of the electrodes and battery fitted to slidably engage the defibrillator with complementary upper and lower tray like recesses as set forth through elements 20 and 21 seen in Figs. 7B and 17 for providing the predictable results of providing an integral unit for minimizing connection or maintenance of multiple parts thereby reducing human error in a heightened stress environment of using the defibrillator. It would have been obvious to

one having ordinary skill in the art at the time the invention was made to modify the system as taught by Olson in view of Hansen and Morgan with a common housing of the electrodes and battery fitted to slidably mechanically and electrically engage the defibrillator with complementary upper and lower tray like recesses, since such a modification would provide the predictable results of providing an integral unit for minimizing connection or maintenance of multiple parts thereby reducing human error in a heightened stress environment of using the defibrillator.

***Response to Arguments***

12. Applicant's arguments with respect to claims 1, 4-6, and 10-11 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH STOKLOSA whose telephone number is (571)272-1213. The examiner can normally be reached on Monday-Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/  
Primary Examiner, Art Unit 3762

Joseph Stoklosa  
Examiner  
Art Unit 3762

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Examiner, Art Unit 3762  
11/2/2009